

BEFORE THE NATIONAL LABOR RELATIONS BOARD  
UNITED STATES OF AMERICA  
REGION 19

International Association of Machinists and  
Aerospace Workers, District Lodge 24<sup>1</sup>

Employer

and

Case 36-RC-6266

Communications Workers of America,  
AFL-CIO, CLC<sup>2</sup>

Petitioner

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record<sup>3</sup> in this proceeding, the undersigned makes the following findings and conclusions:<sup>4</sup>

**I) SUMMARY**

The Employer is a labor organization with an office in Portland, Oregon that represents employees for the purposes of collective bargaining within its jurisdiction in Oregon and southwest Washington. The Petitioner filed the instant petition seeking to represent a unit of all business representatives and organizers employed by the Employer out of its Portland office, excluding all office clerical employees, guards, and supervisors as defined in the Act.<sup>5</sup> At issue in this case is whether the Petitioner is an appropriate bargaining representative for the Employer's employees or whether the Petitioner's role as a competitor to the Employer in organizing employees creates a conflict of interest that would preclude the Petitioner's

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<sup>1</sup> The Employer's name appears as corrected at the hearing.

<sup>2</sup> I take administrative notice that this is the Petitioner's correct legal name.

<sup>3</sup> The Petitioner and the Employer both filed timely briefs, which were duly considered.

<sup>4</sup> The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein. The labor organization involved claims to represent certain employees of the Employer. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

<sup>5</sup> There are approximately 5 employees in the petitioned-for unit, which the parties stipulated as being an appropriate unit.

representation of the unit employees sought. The Employer contends that the petition must be dismissed because a conflict of interest exists in having the Petitioner represent its business representatives and organizers. Contrary to the Employer, the Petitioner asserts that no conflict of interest exists and that it should be permitted to represent the Employer's employees sought in its petition. Based on the record evidence presented and the arguments presented by the parties, I find that the Employer has failed to meet its burden of proving that a conflict of interest exists that would preclude the Petitioner from representing the Employer's business representatives and organizers. Accordingly, I shall direct an election in the unit sought by the Petitioner.

Below, I have set forth the evidence presented in the hearing concerning the operations of the Employer and its parent organization, the International Association of Machinists and Aerospace Workers ("IAM"), and the alleged conflict of interest that exists between the Petitioner and the Employer and the IAM. Following the presentation of the evidence, I have set forth a brief summary of the parties' positions and a section applying the legal standards to the evidence. The decision concludes with a direction of election and the procedures for requesting review of this decision.

## **II) EVIDENCE**

### **A) Background**

The Employer is a labor organization with an office in Portland, Oregon that represents employees for the purposes of collective bargaining. There are approximately 3300 members served by the Employer. Its district jurisdiction encompasses Oregon and southwest Washington. It is one of many district lodges reporting to the parent organization, the IAM, whose headquarters is located in Upper Marlboro, Maryland. Eight local lodges also fall within the Employer's district jurisdiction. The Employer's operations are governed by its by-laws, as well as the IAM's constitution. The Employer, as well as other district and local lodges, receive organizing direction, strategy, and assistance from the IAM.

The Petitioner has traditionally represented employees in the telecommunications industry. It has approximately 700,000 members. On the other hand, the IAM has approximately 383,000 members nationwide. It traditionally has represented employees in machine manufacturing, production, and air transport sectors. The Employer's directing business representative, Robert Petroff, testified without contradiction that the IAM has been the primary labor organization representing employees in the air transport sector. The Employer, however, does not represent anyone employed in the air transport sector.<sup>6</sup> Rather, any employees organized in that sector are assigned to a different district lodge for representation.

At the time of the hearing, the Employer employed five business representatives, but no one with the title solely of organizer. One of the five business representatives is elected as the directing business representative.<sup>7</sup> Business representatives are responsible for day-to-day contract administration, negotiations, grievance resolution, and organizing. The Employer pays the salary for each business representative, but the IAM reimburses the Employer for half of the salary. There is no history of collective bargaining with respect to the business representatives or organizers. The Employer also employs an unspecified number of clerical employees.

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<sup>6</sup> In fact, business representative Gerald Carver testified that the primary industries that the Employer has attempted to organize are automotive and industrial machine.

<sup>7</sup> Although directing business representative Robert Petroff testified that he makes assignments to other business representatives and makes recommendations concerning the hiring of business representatives, there is no contention, or sufficient record evidence to establish, that the directing business representative is a supervisor under the Act.

Another labor organization, Office and Professional Employees International Union, Local #11 ("Local 11"), represents these clerical employees. Local 11 and the Employer have been parties to a collective-bargaining agreement covering those employees.

**B) Alleged Business Competition Between the Employer and Petitioner**

In recent years the Petitioner has organized or attempted to organize some of the same groups of employees that IAM has attempted to organize. In 1997 the Petitioner successfully organized customer service agents employed by U.S. Airways. At that point IAM already represented certain other employees (e.g., mechanics and ramp agents) employed by U.S. Airways. When IAM filed an Article 20 objection with the AFL-CIO, the AFL-CIO ruled that the Petitioner could seek to organize the employees. IAM had also unsuccessfully sought to organize those customer service agents a couple of years earlier. None of the Employer's employees sought by the Petitioner participated in any of the U.S. Airways organizing campaigns.

Petroff testified that IAM and the Petitioner simultaneously attempted to organize unspecified employees of Piedmont Airlines at the time that Piedmont was merging its operations with Allegheny Airlines. He further claimed that the International Brotherhood of Teamsters, which had sole representation of Allegheny's employees, entered into an agreement that prevented IAM from organizing that unspecified group of employees.<sup>8</sup> None of the Employer's employees participated in the organizing efforts at Piedmont.

At the time of the hearing, the Employer was not engaging in any organizing campaigns involving the air transport sector. Although the Employer does not represent any employers at Portland International Airport, the Employer attempted to organize employees of a company that provides cleaning and other services for airlines there a year or so before the hearing. The record does not contain any evidence showing that the Petitioner has ever attempted to organize that company's employees. A few years back one of the Employer's business representatives assisted the IAM's nationwide campaign to organize counter agents at United Air Lines for a couple of days.

Petroff testified without contradiction that representation of employees of contractors performing service contract work<sup>9</sup> is a high priority for IAM. IAM represents employees of service contractors at several air bases around the country. Although the Employer does not represent any employees of such contractors, its employees did attempt to organize employees at the Umatilla army depot in Oregon at one time.<sup>10</sup> There is no evidence in the record that the Petitioner has represented or attempted to organize employees of service contractors at that location. The record does contain general testimony, however, that the Petitioner has increased its attempts to organize employees of service contractors in recent years. The Petitioner is not currently organizing, nor does it have plans to organize, service contractor employees in Oregon or southwest Washington.

A district lodge of the IAM represents a unit of organizers employed by a local of the Petitioner in Denver, Colorado.<sup>11</sup> That CWA local and district lodge of the IAM are parties to a collective-bargaining agreement, which is currently in effect, covering that unit of organizers.

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<sup>8</sup> Petroff was uncertain whether it was a written or oral agreement, and no written agreement was entered into the record.

<sup>9</sup> Petroff defined service contract work as that in which a contractor provides service on a military installation for a branch of the Federal government.

<sup>10</sup> Business representative Carver testified that he is not aware of any current employees of the Employer who participated in that Umatilla depot organizing campaign.

<sup>11</sup> At the time of the hearing, that local in Denver employed only one organizer.

In recent years the IAM and the Petitioner have sometimes sought mergers with the same unions. IAM unsuccessfully attempted to enter into a merger agreement with the Association of Flight Attendants (“AFA”). Thereafter, AFA and the Petitioner entered into a merger agreement effective December 31, 2003. In a similar vein, IAM engaged in numerous discussions with the International Union of Electronic, Salaried Machine and Furniture Workers (“IUE”) in order to affiliate with that union. IAM’s attempts ultimately proved unsuccessful. The Petitioner also sought to affiliate with the IUE, which resulted in the IUE affiliating with the Petitioner. IAM has also had ongoing discussions with IUE this year concerning affiliation with IAM and disaffiliation with the Petitioner. At the time of the hearing, IUE had chosen to remain affiliated with the Petitioner. IAM’s merger discussions with AFA and IUE have not involved the Employer or its employees, as they were coordinated at the International level.

There is no evidence that the IAM and the Petitioner have ever sought to enter into an agreement merging their labor organizations.

### **III) POSITIONS OF THE PARTIES**

The Employer contends that I should dismiss the instant petition because of a disabling conflict of interest in having the Petitioner represent the Employer’s business representatives and organizers. Specifically, the Employer argues that the Petitioner is a director competitor of IAM and, as evidenced by its recent merger and organizing activities, will use its representative status to further its agenda of undermining the IAM rather than furthering the interests of the unit employees.

Contrary to the Employer, the Petitioner argues that the Employer failed to meet its burden of proving that a disabling conflict of interest exists because the record evidence does not establish that the Petitioner and the Employer are competitors, and that the Employer’s claim that the two labor organizations might compete to represent the same group of employees is based on speculation and conjecture.

### **IV ANALYSIS**

The Board has recognized that where a conflict of interest exists on the part of the union that files a representation petition such that good-faith collective bargaining between the union and the employer could be jeopardized, the petition must be dismissed. *CMT, Inc.*, 333 NLRB 1307 (2001); *Bausch & Lomb Optical Co.*, 108 NLRB 1555. The Board has determined that a conflict of interest finding is not restricted to those instances where “the mischief already has resulted from a conflict,” but also where its potential exists. *Bausch & Lomb*, 108 NLRB at 1562. Nonetheless, in order to find that the Union has a disabling conflict of interest, the Board requires a showing of a “clear and present” danger of interfering with the bargaining process. *Guardian Armored Assets, LLC*, 337 NLRB 556, 558 (2002). The burden on the party who seeks to prove this disabling conflict of interest is a heavy one. *Alanis Airport Services*, 316 NLRB 1233 (1995); *Garrison Nursing Home*, 293 NLRB 122 (1989). The burden is a heavy one because of the “strong public policy favoring the free choice of a bargaining agent by employees.” *CMT, Inc.*, 333 NLRB at 1307, fn.6; *Quality Inn Waikiki*, 272 NLRB 1, 6 (1984), *enfd.* 783 F.2d 1444 (9<sup>th</sup> Cir. 1986).

I find that the Employer has not demonstrated that a conflict of interest exists that would pose a clear and present danger to the bargaining process between the Petitioner and the Employer. Although the Employer claims that it and the Petitioner are competitors based on their recent competitive organizing and merger activities, the record does not support that claim. There is no record evidence showing that the Employer and the Petitioner have sought to organize the same group of employees. Although the Employer claims that the Petitioner has begun to organize employees in the air transport and service contract industries that are a high

priority for the IAM, there is no evidence that the Employer or its employees have engaged in any significant organizational activities in these areas. Indeed, the Employer does not have any members in these industries and the Petitioner has not attempted to organize employees in these industries within the Employer's jurisdiction. I also reject the Employer's claim that the competition between the IAM and the Petitioner to merge with other labor organizations presents a clear and present danger to the bargaining process. Even accepting the Employer's claim that such merger competition creates a disabling conflict of interest (which I do not), the record is clear that the Employer and its employees did not have any involvement in the merger attempts. Thus, the Employer has not demonstrated that the Petitioner is a business competitor of the Employer.

The Employer asserts nonetheless that it is possible that the Petitioner and the Employer may be involved in competing organizational efforts in the air transport and service contract industries in light of the evidence demonstrating the Petitioner's increasing attempts to organize those industries and the Employer's past organizational attempts. The fact that these two organizations *might* attempt to organize the same groups of employees is insufficient to demonstrate a clear and present danger to the bargaining process. Indeed, the Employer has not presented any evidence to demonstrate that the Petitioner filed the instant petition as part of an effort to undermine the Employer's organizational efforts. Thus, it would be inappropriate and speculative for me to conclude that the Petitioner's filed the instant petition with any other purpose than to engage in legitimate collective bargaining and employee representation. See *Teamsters Local 2000*, 321 NLRB 1383, 1385 (1996) (Board rejects as speculative the claim that a union filed the petition to represent another labor organization's employees only to establish itself as a rival labor organization).

I also reject the Employer's contention that because the Employer and the Petitioner are both labor organizations engaged in the same "business," the potential for a serious conflict of interest exists that should preclude the Petitioner from representing the Employer's employees. I reject the Employer's basic premise that a labor organization is precluded from representing another labor organization's employees simply because they are in the same "business" of representing and organizing employees. As the Petitioner argues, no labor organization's employees could be represented by another union under that theory because a disabling conflict of interest would automatically exist. The Board has never reached that conclusion and the fact that the definition of employer set forth in Section 2(2) excludes a labor organization **except** when it is acting as an employer undermines the Employer's argument. I also note that the record reveals that even though they are both labor organizations, an IAM district lodge represents a bargaining unit at one of the Petitioner's locals and that the parties have successfully negotiated a collective-bargaining agreement covering that unit's employees.

By contrast, when the Board has found that a labor organization may not represent another labor organization's employees, the record contained specific evidence of an inherent conflict of interest. See, e.g., *International Association of Bridge, Structural, and Ornamental Iron Workers*, 211 NLRB 1010 (1974); *Teamsters Local 249*, 139 NLRB 605, 606-607 (1962). In those cases, both the petitioning union and the employer were both members of the same international union, which had control over the strike activities and contracts ratified by the local unions. The Board therefore concluded that the petitioning union had allegiances that conflicted with the purpose of protecting and advancing the interest of the employees it sought to represent. Here, the Petitioner does not owe any allegiance to the IAM or the Employer and its decisions regarding the unit employees are not subject to the control or review of those organizations. In the absence of any specific evidence of a conflict of interest between the Petitioner and the Employer, I find those two cases to be distinguishable.

In sum, I find that the Employer has failed to meet its heavy burden of proving that a conflict of interest exists that would preclude the Petitioner from representing the Employer's employees. Accordingly, I shall direct an election in the unit sought by the Petitioner.

#### **V) CONCLUSION**

Based on the foregoing analysis and the record as a whole, I have found that the petition should not be dismissed because there is no disabling conflict of interest that would jeopardize collective bargaining between the Petitioner and the Employer. Accordingly, I shall direct an election in the following Unit described as follows:

All business representatives and organizers employed by the Employer based out of its Portland, Oregon office, excluding all office clerical employees, guards, and supervisors as defined in the Act.

#### **VI) DIRECTION OF ELECTION**

An election by secret ballot shall be conducted by the undersigned among the employees in the Unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the Unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike, which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by Communications Workers of America.

##### **A) List of Voters**

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that an election eligibility list, containing the alphabetized full names and addresses of all the eligible voters, must be filed by the Employer with the Officer-in-Charge for Sub-Region 36 within 7 days of the date of this Decision and Direction of Election. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. The Sub-Region shall, in turn, make the list available to all parties to the election.

In order to be timely filed, such list must be received in the Sub-Regional Office, 601 SW 2<sup>nd</sup> Avenue, Suite 1910, Portland, OR, 97204-3170, on or before September 30, 2004. No extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the filing of such list. Failure to comply with this

requirement shall be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission to (503) 326-5387. Since the list is to be made available to all parties to the election, please furnish a total of 4 copies, unless the list is submitted by facsimile, in which case only one copy need be submitted.

#### **B) Notice Posting Obligations**

According to Board Rules and Regulations, Section 103.20, Notices of Election must be posted in areas conspicuous to potential voters for a minimum of three working days prior to the date of election. Failure to follow the posting requirement may result in additional litigation should proper objections to the election be filed. Section 103.20(c) of the Board's Rules and Regulations requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

#### **C) Right to Request Review**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by October 7, 2004.

**DATED** at Seattle, Washington, this 23rd day of September 2004.

/s/ Catherine M. Roth

Catherine M. Roth, Acting Regional Director  
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